

Document No.
DEPARTMENT OF INSURANCE
CHAPTER 69
Statutory Authority: 1976 Code Section 38-79-430

69-65. South Carolina Patients' Compensation Fund

Preamble:

The Board of Governors of the South Carolina Patients' Compensation Fund proposes to create Article II of Chapter 69, Regulation 69-65, South Carolina Patients' Compensation Fund (Fund).

Notice of Public Hearing and Opportunity for Public Comment:

The Administrative Law Judge Division will conduct a public hearing for the purpose of receiving oral comments on Monday, February 24, 2003 at 10:00 a.m. at 1205 Pendleton Street, Columbia, South Carolina. Interested parties should submit their views in writing to: Melanie A. Joseph, Executive Assistant to the Director/Legislative Liaison, S.C. Department of Insurance, Post Office Box 10015, Columbia, South Carolina 29202-3105 on or before Friday, February 14, 2003 .

Preliminary Fiscal Impact Statement:

No additional state funding is requested.

Statement of Need and Reasonableness:

The Board of Governors of the South Carolina Patients' Compensation Fund proposes to create Article II of Chapter 69, Regulation 69-65, South Carolina Patients' Compensation Fund (Fund) in order to address revisions to the Fund's Plan of Operations related to the purpose and powers of the Fund; indemnification for members of the Board of Governors; audit authority and requirements; conflicts of interest and appeals.

Text:

Article II

69-65. South Carolina Patients' Compensation Fund

A. Purpose and Powers

(1) There is created the South Carolina Patients' Compensation Fund (Fund) for the purpose of paying that portion of a medical malpractice or general liability claim, settlement, or judgment which is in excess of two hundred thousand dollars for each incident or in excess of six hundred thousand dollars in the aggregate for one year. The Fund is liable only for payment of claims against licensed health care providers (providers) in compliance with the provisions of this article and includes reasonable and necessary expenses incurred in payment of claims and the Fund's administrative expense.

(2) The Fund must operate pursuant to a Plan of Operation which shall provide for efficient, fair, and nondiscriminatory administration and for the prompt and efficient provision of excess medical malpractice insurance and may contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of

necessary facilities, management of the Fund, assessment of the members to defray losses and expenses, reasonable underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the Fund. The Plan of Operation shall provide that any profit achieved by the Fund must be added to the reserves of the Fund or returned to the policyholders as a dividend. Amendments to the Plan of Operation may be made by the Board of Governors of the Fund with the approval of the director or his designee.

(3) The Fund has the power on behalf of its members to: (a) issue, or cause to be issued, policies or contracts to applicants including incidental coverages; (b) establish reasonable underwriting standards, underwrite policies or contracts and to adjust and pay losses with respect thereto or to appoint service companies to perform those functions; (c) cede reinsurance; (d) establish procedures for determining amounts of insurance to be provided by the Fund, and (e) make deficit assessments.

B. Indemnification for Board of Governors or Former Board of Governors Members

(1) The Fund shall be managed and operated by the Board of Governors as outlined in Section 38-79-430 of the South Carolina Code of Laws.

(2) Any person or member made a party to any action, suit or proceedings because that person or member served on the Board, a committee, as an officer or employee of the Fund will be indemnified for all costs, including, but not limited, to the amounts of judgments, settlements, fines or penalties, and expenses incurred in connection with such action, suit or proceedings. However, such indemnification will not be provided in any matter, action, suit or proceeding in which the person or member has been finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful malfeasance or reckless disregard of the responsibilities of his office. In the event of a settlement of the matter before final adjudication, indemnification will be provided only if the Fund is advised by independent counsel that the person or member to be indemnified did not, in counsel's opinion, commit such a breach of duty and the Board, by majority vote, approves the settlement. This indemnification shall not apply to any association. Indemnification hereunder shall not be exclusive of other rights to which such Board member, member of a committee or subcommittee, member, manager, officer, employee or affiliate thereof, may be entitled as a matter of law.

(3) The cost and expenses of such indemnification will be paid for by the Fund.

C. Audits

(1) The Director or his designee may examine the books of account, records and reports not more than once every three years unless by mutual consent of the Board that the examination occur more often.

(2) As a matter of Board policy, the books of account, records, reports and other documents of the Fund shall be open to inspection by all other persons, including members, subject to the provisions of the S. C. Freedom of Information Act, S. C. Code Ann. § 30-4-10, *et seq.*, as now constituted or hereafter amended.

(3) The Fund shall provide for the making of detailed reports of liability assumed or cancelled, for the preparation of annual budgets of the Fund and for the rendering of accounts to each member at least every twelve months during continuance of membership. Annual budgets shall be approved by the Board at its summer meeting or any other special meeting called for that purpose.

(4) The Fund shall file with the Department annually a statement, which contains information with respect to its transactions, financial condition, operations and affairs during the preceding year.

(5) The books of account of servicing carriers shall be audited at least annually by the Board, its designee or by a firm of independent auditors designated by the Board. The reports of the examinations or audits shall be open and free for examination by the Director or his designee upon request.

D. Conflicts of Interest

(1) This section is intended to establish standards and procedures to assist the Board and its members in avoiding conflicts of interest involving related party transactions, bias or prejudice that may interfere with the Board's ability to discharge its duties on a specific issue.

(2) If any Board member or committee member has, or has had, any familial, professional, business, social, political or other relationship with an entity or individual appearing before the Board or one of its committees or requesting some action by the Board or one of its committees, then he or she shall immediately disclose to the committee chair and the Board Chair the nature and circumstances of the relationship.

(3) If the Board member or committee member having such a relationship determines that it would unduly influence his or her consideration of the matter, the Board member or committee member must disqualify himself or herself from participating in the investigation, report, deliberation, evaluation and any other activity directly associated with the matter and must refrain from attempting to influence other committee or Board member's evaluations or decisions upon the matter. The member should also abstain from voting on the matter.

(4) If a committee member or Board member is disqualified pursuant to this section, the minutes of the Board or committee meeting shall reflect the identity of the committee member or Board member who did not participate in the discussion or deliberation of the matter.

(5) Factors to be considered in determining whether a relationship requires disqualification include remoteness in time of the relationship, nature of any related party transaction, duration of the relationship (transitory, recurring, or long term), and the extent to which the relationship is distinguishable from a casual, incidental contact.

(6) If a committee member or Board member determines that a particular relationship does not require disqualification, and the Board Chair determines that the relationship does require disqualification, the Board Chair's determination shall prevail. The decision of the Board Chair upon this matter is final.

E. Appeals

(1) Any applicant, insured or member may make an appeal on any alleged violation of the Plan of Operation or any alleged improper act or ruling of the Fund directly affecting it as to coverage or premium or, in the case of a member, its assessment. Any member may request the Fund to act upon or to rule upon any proposed change in or addition to the Plan of Operation. The Board may refer the matter to committee or the Manager for purposes of obtaining a report and recommendation.

(2) The Chairman of the Board may appoint a hearing officer to conduct a hearing according to the Administrative Procedures Act.